

THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Kuldip Singh (JM)

I.T.A. No. 7023/Mum/2019 (A.Y. 2011-12)
I.T.A. No. 7024/Mum/2019 (A.Y. 2012-13)
I.T.A. No. 7557/Mum/2019 (A.Y. 2014-15)

Futura Polyesters Limited 111, T.V. Indl Estate S.K. Ahire Marg, Worli Mumbai-400 013. PAN : AAACI3404K (Appellant)	Vs.	ACIT-5(1)(2) Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020. (Respondent)
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Assessee by	None
Department by	Shri Achal Sharma
Date of Hearing	14.06.2022
Date of Pronouncement	21.06.2022

O R D E R

Per B.R.Baskaran (AM) :-

All the three appeals relating to Asst. Years 2011-12, 2012-13 & 2014-15 are directed against the orders passed by Learned CIT(A)-10, Mumbai.

2. None appeared on behalf of the assessee, even though the notice of hearing was served on the official liquidator through the department two times. Hence we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

3. The assessee is engaged in the business of manufacture of polyester stable fibres etc.

4. We shall first take up the appeal filed for AY 2011-12. Following issues are contested in this appeal by the assessee:-

(a) Addition u/s 14A of the Act.

(b) Disallowance of depreciation on new assets

(c) Disallowance of commission on sales

(d) Addition to Gross profit.

4.1 The first issue relates to the addition made u/s 14A of the Act. The assessee declared exempt dividend income of Rs.53,445/- and disallowed a sum of Rs.42,299/- u/s 14A of the Act. The AO, however, computed disallowance as per Rule 8D and accordingly computed disallowance at Rs.47,67,918/-. Accordingly, he added the differential amount of Rs.47,25,619/-. The LdCIT(A) also confirmed the same.

4.2 We notice that the assessee has pleaded before LdCIT(A) that the disallowance should not exceed exempt income. The above said plea of the assessee finds support from the decision rendered by Hon'ble Madras High Court in the case of M/s Marg Limited vs. CIT (Tax case appeal nos. 41 to 43 & 220 of 2017). Accordingly, we set aside the order passed by LdCIT(A) on this issue and direct the AO to restrict the disallowance u/s 14A to the amount of exempted dividend income.

4.3 The next issue contested in AY 2011-12 relates to the disallowance of depreciation claim of Rs.95,72,341/- relating to new assets purchased during the current year. We notice that the AO disallowed the above said claim, since the assessee did not furnish the details and evidences on the reasoning that they are unable to access the records located at its factory in Manali, Chennai. The LdCIT(A) also confirmed the same. Thus, we notice that the only reason for disallowance is non-furnishing of relevant details. In the interest of natural justice, in our view, the assessee may be provided with one more opportunity to furnish relevant details before the AO. Accordingly, we set aside the order passed by LdCIT(A) on this issue and restore the same to the file of AO for examining it afresh. The assessee is also directed to furnish the details that were/may be called for by the AO.

4.4 The next issue relates to the disallowance of commission expenses on sales amounting to Rs.3,50,57,000/-. The assessee had provided for

commission expenses and claimed the same as deduction. It included commission payable to its sister concern amounting to Rs.35,84,750/-. Since no supporting details were furnished, the AO disallowed the claim. The LdCIT(A) also confirmed the same. Thus, we notice that the only reason for disallowance is non-furnishing of relevant details. In the interest of natural justice, in our view, the assessee may be provided with one more opportunity to furnish relevant details before the AO. Accordingly, we set aside the order passed by LdCIT(A) on this issue and restore the same to the file of AO for examining it afresh. The assessee is also directed to furnish the details that were/may be called for by the AO.

4.5 The last issue relates to the addition of gross profit. The AO noticed that the gross profit ratio has declined in the current year to 4.36% from 7.11% declared in the immediately preceding year, despite increase in the sales volume. Hence the AO added 3% of the sales to the total income, which was reduced to 2% by LdCIT(A). In our view, this kind of adhoc addition is not correct. The explanations given by the assessee for the fall in the gross profit rate should have been examined critically by the tax authorities. Accordingly, in our view, this issue also requires examination at the end of the AO. Accordingly, we set aside the order passed by LdCIT(A) on this issue and restore the same to the file of AO for examining it afresh. The assessee is also directed to furnish the details that were/may be called for by the AO.

5. We shall now take up the appeal filed for AY 2012-13.

5.1 The first issue relates to the disallowance of Provision for doubtful debts amounting to Rs.17,43,000/-. The AO noticed that the assessee had claimed deduction of Rs.17,44,469/- towards Provision for doubtful debts. The assessee supported its claim by placing reliance on the decision rendered by Hon'ble Karnataka High Court in the case of CIT vs. Yokogawa India Ltd (204 taxman 305). The AO, however, held that crystallized liabilities alone could

be allowed as deduction. Accordingly, he disallowed the claim of the assessee. The LdCIT(A) also confirmed the same.

5.2 We notice that the sec. 36(1)(vii) of the Act allows deduction of bad debts, which have been actually written off, subject to the compliance of conditions prescribed in sec. 36(2) of the Act. Hence, the Provision for bad debts is not allowable as deduction. Accordingly, we are of the view that the LdCIT(A) was justified in confirming the disallowance of Provision for bad debts.

5.3 The next issue relates to the disallowance made u/s 14A of the Act. In this year, the assessee received dividend income of Rs.4,43,846/- and disallowed a sum of Rs.22,000/- u/s 14A of the Act. The AO computed the disallowance as per Rule 8D and accordingly made disallowance of Rs.42,36,774/- u/s 14A of the Act. The LdCIT(A) also confirmed the same. In the preceding year, we have directed to restrict the disallowance to the amount of exempt income. Following the same, we modify the order passed by LdCIT(A) on this issue and direct the AO to restrict the disallowance to the amount of exempt income.

5.4 The next issue relates to the disallowance of commission on sales amounting to Rs.1,30,98,000/-. Since no supporting details were furnished, the AO disallowed the claim. The LdCIT(A) also confirmed the same. Thus, we notice that the only reason for disallowance is non-furnishing of relevant details. In the interest of natural justice, in our view, the assessee may be provided with one more opportunity to furnish relevant details before the AO. Accordingly, we set aside the order passed by LdCIT(A) on this issue and restore the same to the file of AO for examining it afresh. The assessee is also directed to furnish the details that were/may be called for by the AO.

5.5 The next issue relates to disallowance of bad debts claim of Rs.21,99,000/-. The assessee did not furnish the details of parties whose account was written off and also compliance of conditions prescribed u/s

36(2) of the Act. Hence the AO disallowed the bad debt claim made by the assessee. The LdCIT(A) also confirmed the same. We notice that the assessee has not furnished the details relating to the parties and also compliance of conditions prescribed u/s 36(2) of the Act. In the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity to furnish the details. Accordingly, we restore this issue to the file of the AO.

5.6 The next issue relates to the disallowance of auditors remuneration of Rs.23,66,000/-. The AO noticed that the assessee has made provision for payment of audit fees, but no audit was carried out during the year. Accordingly, he disallowed the claim. The LdCIT(A) noticed that the assessee has not deducted TDS also and further he had confirmed similar disallowance made in AY 2013-14. Accordingly, he confirmed the disallowance. In our view, it is the duty of the assessee to show that there was a liability for payment of audit fees and then only a provision can be created. Further, it is also required to be shown that the TDS was deducted thereon, even subsequently. If the assessee is not able to prove these aspects, then claim cannot be justified. In the interest of natural justice, we are of the view that the assessee may be provided with an opportunity on this issue. Accordingly, we restore this issue also to the file of AO.

5.7 The next issue relates to the disallowance made u/s 43B of the Act. The assessee had claimed certain expenses u/s 43B of the Act on actual payment basis. Since no details were furnished the AO disallowed the claim and the LdCIT(A) also confirmed the same. In the interest of natural justice, we are of the view that the assessee may be provided with an opportunity on this issue. Accordingly, we restore this issue also to the file of AO.

5.8 The last issue relates to the disallowance of foreign exchange loss. Since no details were furnished the AO disallowed the claim and the LdCIT(A) also confirmed the same. In the interest of natural justice, we are of the view that

the assessee may be provided with an opportunity on this issue. Accordingly, we restore this issue also to the file of AO.

6. We shall now take up the appeal filed for AY 2013-14. In this year, the assessee is aggrieved by the decision of LdCIT(A) in partially confirming the disallowance of expenses claimed by the assessee. The assessee has also raised a ground on validity of assessment order contending that the same was served upon the assessee beyond the statutory period for completion of assessment.

6.1 The assessment order was served upon the assessee on 02-01-2017. The AO was required to complete the assessment by 31.12.2016. Hence the assessee has contended that the assessment order is not valid, since it was served after 31.12.2016. The LdCIT(A) held that the AO has passed the order within the statutory time limit prescribed in sec. 153(1) of the Act. Accordingly, he rejected the contentions of the assessee. We notice that the LdCIT(A) has held that the assessment has been completed by the AO within the statutory time limit. Though the assessee contends that it has been served beyond 31.12.2016, the point that is required to be proved by the assessee is that the assessment order has been passed after 31.12.2016, in order to hold that the assessment order is not valid. Except raising a ground on this issue, the assessee has not brought any material on record to prove that the assessment order was passed after 31.12.2016. In the absence of any material to support its contentions, this ground of the assessee is liable to be quashed. Accordingly, we confirm the order passed by LdCIT(A) on this issue.

6.2 The next issue relates to the disallowance of expenses claimed by the assessee holding that the assessee did not carry on any business. The assessee had claimed expenses aggregating to Rs.59.20 crores and declared income from operations to the tune of Rs.3.28 crores. The AO noticed that the assessee did not carry on any manufacturing activity during the year under consideration. The income from operations declared by the assessee

consisted of commission income, interest income, creditors balances written off, profit on sale of assets, bad debts recovery, provision no longer required etc. The AO held that the expenditure claimed by the assessee is not related to these business income and accordingly, the AO disallowed entire expenses claimed by the assessee. The LdCIT(A), however, allowed deduction of 20% of commission & other income towards expenses on earning those income. Still aggrieved, the assessee has filed this appeal.

6.3 We heard Ld D.R on this issue and perused the record. We notice that the LdCIT(A) has allowed deduction of 20% of commission and other income towards expenses on estimated basis. We also notice that the Ld CIT(A) has taken support of the decision rendered by Hon'ble Bombay High Court in the case of Chinai& Co. P Ltd (206 ITR 616)(Bom). However, the ratio of the above said decision is that the expenses incurred on maintaining its status as company should be allowed. Besides the above, the expenses incurred on earning the income are direct expenses, which are required to be allowed fully. In addition to the direct expenses, in our view, the indirect expenses may be allowed @ 20% of the commission & other income. We notice that this kind of analysis have not been carried out. Accordingly, we set aside the order passed by LdCIT(A) on this issue and restore the same to the file of AO for examining this issue afresh.

7. In the result, the appeals of the assessee for AY 2011-12 and 2014-15 are treated as allowed for statistical purposes. The appeal pertaining to AY 2012-13 is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 21.06.2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/06/2022

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai